

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROGER BYRNE,

Case No. 2:06-cv-12179

Plaintiff,

SENIOR U.S. DISTRICT JUDGE
ARTHUR J. TARNOW

v.

UNITED STATES OF AMERICA, ET AL.,

U.S. MAGISTRATE JUDGE
ANTHONY P. PATTI

Defendants.

/

ORDER ADOPTING REPORT AND RECOMMENDATION [165]

This case stems from the Internal Revenue Service's assessment of employment tax penalties arising out of the operation of a Michigan Corporation, Eagle Trim, Inc, in 2000. Plaintiff Roger Byrne was the President of Eagle Trim, Inc., and Cross-defendants Bernard Fuller Eric Kus and were both corporate officers who were alleged to have helped the company evade its tax obligations. After the IRS disallowed refund and abatement on April 13, 2006, Byrne filed suit on May 11, 2006. [Dkt. #1].

Over the course of the following decade, the case would go through three appeals. On May 15, 201, the Sixth Circuit issued an opinion that neither Eric Kus nor Roger Byrne was liable for the Trust Fund Recovery Penalty, I.R.C. § 6672.

[132]. On May 18, 2018, both Eric Kus and Roger Byrne moved for attorney fees and costs, and those motions were referred to Magistrate Judge Anthony Patti.

The Magistrate Judge issued a Report and Recommendation [165] on October 2, 2018. The Magistrate Judge advised the Court to (1) deny Plaintiff Byrne's motion for fees and costs pursuant to 26 U.S.C. § 7430 [155], except that the denial of costs should be without prejudice; (2) deny Counter-defendant Kus' motion for recovery of attorneys' fees [156]; (3) grant Counter-defendant Kus' bill of costs [157] as unopposed; and (4) grant the joint motion for briefing schedule [160] *nunc pro tunc*. No objections were filed.

The Court having reviewed the record, the Report and Recommendation [165] is hereby **ADOPTED** and entered as the findings and conclusions of the Court. Accordingly,

IT IS ORDERED that Plaintiff Byrne's Motion for fees and Costs [155] is **DENIED** without prejudice.

IT IS FURTHER ORDERED that Counter-Defendant Kus' Motion for Recovery of Attorney Fees [156] is **DENIED**.

IT IS FURTHER ORDERED that Counter-Defendant Kus' Bill of Costs [157] is **GRANTED** as unopposed.

IT IS FURTHER ORDERED that the joint motion for briefing schedule [160] is **GRANTED** *nunc pro tunc*.

SO ORDERED.

Dated: October 31, 2018

s/Arthur J. Tarnow
Arthur J. Tarnow
Senior United States District Judge